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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4452 of 1999
with
CIVIL APPLICATION NO. 7002/199
with
Cross Objection Stamp No. 45 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

NATHABHAI DEVDANBHAI DECD. THRO' HEIRS SONBAIBEN NATHABHAI

Appearance:

MR AD OZA for appellants
MR ANSHIN H DESAI for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE K.M.MEHTA

Date of decision: 06/09/2000

ORAL JUDGEMENT (per J.N. Bhatt, J)

Notice. Service of notice is waived by Mr. Desai for the respondents original plaintiffs.

2. By this appeal under Section 96 of the Civil Procedure Code, the appellants original defendants have assailed the judgement and decree recorded in Special Civil Suit No. 34 of 1997 dated 26.2.1999, whereby, the respondents herein original plaintiffs came to be awarded an amount of Rs. 3,32,000/- with interest at the rate of 12% per annum from the date of suit till payment by way of compensation on account of untimely and premature death of an earning member of the family Nathabhai Devdanbhai in electrocution which occurred on 24.6.1996 in the field of the deceased. The original plaintiffs are heirs and legal representatives of the deceased Nathabhai Devdanbhai who claimed an amount of Rs. 7 lakhs as compensation. In support of the claim they placed reliance on the documentary evidence to which reference is made by us hereinafter at a proper stage and also on the evidence of original plaintiff No. 1 Sonbaiben Nathabhai, widow.

3. The defendants resisted the suit by filing written statement inter alia contending that there was no negligence or any responsibility on the part of the original defendants. The Trial Court, upon assessment and appreciation of evidence, decreed the suit for an amount of Rs. 3,32,000/- against the original suit claim of Rs. 7 lakhs.

4. Learned advocate Mr. A.D. Oza for the appellants-original defendants contended that the plaintiffs failed to prove that there was negligence on the part of the original defendants.

5. In course of hearing, we were supplied copies of the evidence adduced by the parties and relied upon by the Trial Court in passing the impugned judgement and decree. We have, dispassionately, heard learned advocates appearing for the parties and examined the evidence and also the impugned judgement.

6. Deceased Nathabhai died due to electrocution. In view of the medical evidence on record there is also no dispute about this aspect. On the day of incident, the deceased was doing agricultural operations in his field. One tree got uprooted in the adjoining field due to which overhead electric wires cut off. One of them was passing near the tree where the deceased was electrocuted. Such cut off wire was being repaired. Before that, the wire

was theft and temporary connection of cut off wire was done and for major repairs the electric supply was disconnected. On the day of incident, the electric supply was all of a sudden restored in the loose wire because of which the deceased sustained serious electric shock and burns to which he succumbed. He was declared dead when he was being examined at Mendarda Civil Hospital. Upon post mortem, it was found that the death was due to electric shock. The Trial Court has placed reliance on the documentary evidence in reaching the conclusion that there was negligence on the part of the original defendants in not taking required care and maintaining electric wires passing through the field of the deceased.

7. Panchnama Exh. 31, was prepared by the office of the Gujarat Electricity Board. A plain perusal of the proceedings and panchnama Exh. 31 of the Gujarat Electricity Board shows that one cement pole had fallen before the incident occurred and on account of fall of the cement pole of the Gujarat Electricity Board cut off wires were also lying on the tree as well as in the field. There were burn injuries on the hands and palm of the deceased as per inquest report Exh. 22 as well as post mortem report. Panchnama of the scene of accident Exh. 23 also showed that on a fallen tree and cement pole loose wires were temporarily taped. Later on electric supply, for restoration of the line, was discontinued. As the ill-luck would have been, the deceased while he was in the field, the electric supply was all of a sudden restored, as a result of which he became victim of electrocution. This part of the plaintiffs' case is supported by documentary evidence. The Trial Court's finding that the incident of electrocution was on account of negligence on the part of the personnel of the Gujarat Electricity Board is quite justified in the facts and circumstances brought out on the record. Alternatively, the principles of celebrated doctrine *res ipsa loquitur* can be invoked in a proper case when the claim is founded upon the tortuous liability. There is a purpose and policy behind such doctrine. At times in order to establish the tortuous act, direct evidence is hardly obtainable and in order to mitigate such a situation, there is evolution of the doctrine of *res ipsa loquitur*. Primary facts if indicate some wrong, some lack of care or failure in discharge of duty, this doctrine could be invoked then it is for the defendant to explain the circumstances how the accident and incident in question upon which the claim is based, has occurred. In the present case, the defendants have not been able to explain the event of electrocution of

the deceased Nathabhai. Therefore, also, the finding of the Trial Court about negligence on the part of the defendant has remained unassailable.

8. The next point would take us to the appreciation and examination of quantification of damages which is assessed by the Trial Court at Rs. 3,32,000/- considering pecuniary and non-pecuniary sustained by the original plaintiffs, heirs and legal representatives of the deceased Nathabhai. The evidence goes to show that the deceased was aged between 35 and 40 years. Identity card issued by the Election Commission of India in the name of the deceased showed that on the day of incident deceased would be around 33 years whereas learned advocate Mr. Oza in course of his submission, has pointed out from the evidence of his wife that she was aged about 42 years at the relevant time and therefore her husband should be presumed to be older than the wife in view of the prevailing ethos in our society. After having considered overall picture emerging from the record, the deceased would be in the age between 40 and 45. He was owner of the agricultural land in light of the revenue record produced. Deceased was doing agricultural operations in his own fields. Original plaintiff No. 1 widow has stated in her evidence that the deceased was earning Rs. 50,000/- per annum.

9. The Trial Court has taken only the income of the deceased on the basis of minimum wages instead of accepting the annual income as stated by the plaintiff No. 1. In fact, the deceased was taking two crops in a year. There was a well. There was electric connection and the lands owned and cultivated by him were irrigated lands. The Trial Court has only assessed annual utility of the deceased to the common family to the extent of Rs. 1600/-. The deceased died leaving widow, widowed mother and three minor children. It appears that the assessment of annual income of the deceased and annual contribution to the common family fund is correct. Looking to the age, 16 multiplier adopted cannot be said to be on a higher side. In our opinion, the amount of Rs. 3,32,000/- awarded by way of compensation under both the heads in case of main bread winner of the family of six persons, in light of the evidence, by no stretch of imagination, could be said to be excessive or on the higher side. Therefore, the quantification of damages cannot be questioned.

10. At this stage Mr. A.H. Desai for respondent original plaintiffs has sought permission to withdraw the

Cross Objection Stamp No. 45 of 2000. Since the appeal is not admitted and the Cross Objection is given stamp number, the question of registration of the Cross Objection would not assume any survival value, hence registration is refused. Learned advocate Mr. Desai has also stated before us that the amount awarded by the Trial Court is just and reasonable and acceptable.

11. The appellants are directed to deposit full amount due and payable under the impugned judgement and decree minus the amount already deposited within a period of four weeks from today. Original plaintiff No. 1 is widow, plaintiff No. 2 is widowed mother and original plaintiff Nos. 3 to 5 are minor children of the deceased. Therefore, the amount of Rs. 25,000/- in so far as each major are concerned, shall be disposed of by the Trial Court by an account payee cheque. Rest of the directions contained in the impugned judgement and decree shall remain undisturbed in so far as the question of depositing the amount of compensation is concerned.

12. In so far as the question of apportionment is concerned, the Trial Court will take appropriate care after the amount is deposited bearing in mind the age and the extent of dependability of the income of the deceased.

13. With the aforesaid observations and discussion, the appeal shall stand dismissed.

14. In view of the order passed in the main matter, no orders are passed in the Civil Application.

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